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Attorneys for Respondent High Flying Foods

10  
11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
13

14 OLIVIA GARCIA, Regional Director  
15 of Region 21 of the National Labor  
16 Relations Board, for and on behalf of  
17 the NATIONAL LABOR RELATIONS  
18 BOARD,

Petitioner,

v.

HIGH FLYING FOODS,

Respondent.

Case No. 15CV0039-GPC(JLB)

Action Date: January 8, 2015

**AFFIDAVIT OF KEVIN WESTLYE  
RE COMPLIANCE WITH THE  
COURT'S FEBRUARY 12, 2015,  
ORDER**

Dept: 2D

Judge: Hon. Gonzalo P. Curiel

1 I, Kevin Westlye, declare as follows:

2 1. I am the President of Respondent High Flying Foods. I make this  
3 declaration based on my personal knowledge and in response to the Court's  
4 February 12, 2015, Order Granting in Part Temporary Injunction Under Section  
5 10(j) of the National Labor Relations Act, as Amended (29 U.S.C. § 160(j)).

6 2. Francisco Hernandez was offered reinstatement on February 13, 2015,  
7 to his previous position of utility without prejudice to his seniority or any other  
8 rights or privileges previously enjoyed while working for High Flying Foods. A  
9 true and correct copy of the offer of reinstatement to Francisco Hernandez is  
10 attached hereto as Exhibit A.

11 3. Any and all references to Francisco Hernandez's unlawful suspension  
12 and termination have been removed from his employee file and Mr. Hernandez  
13 was notified that the suspension and termination will not be used against him in  
14 any way. See Exhibit A.

15 4. High Flying Foods has rescinded the employee handbook  
16 promulgated on or about April 2014 and has rescinded the acknowledgments  
17 signed by employees stating that High Flying Foods can change the terms and  
18 conditions of employment.

19 5. High Flying Foods has rescinded the rule prohibiting employees from  
20 soliciting other employees for the Union on working time.

21 6. High Flying Foods has rescinded the rule prohibiting employees from  
22 discussing the Union during working hours.

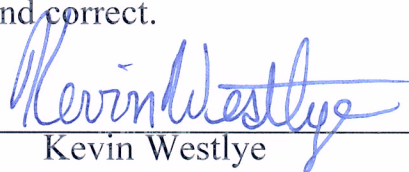
23 7. Copies of the District Court's February 12, 2015, Order Granting in  
24 Part Temporary Injunction Under Section 10(j) of the National Labor Relations  
25 Act, as Amended (29 U.S.C. § 160(j)) were posted on February 17, 2015, in both  
26 English and Spanish in each of High Flying Food's outlets where notices to  
27 employees are customarily posted. The posting was translated into Spanish and  
28 approved by the Regional Director. The postings are free from all obstructions and

1 defacements and employees have free and unrestricted access to the orders. The  
2 postings will remain posted during the Board's administrative proceedings.

3 8. On February 21, 2015, David Selder of the NLRB was provided  
4 access to High Flying Foods' facilities to monitor compliance with the posting  
5 requirement and High Flying Foods will continue to provide Mr. Selder with this  
6 access at his request or the request of the Board.

7 9. On February 21, 2015, at 10 am, 2 pm, and 9 pm the District Court's  
8 February 12, 2015, Order Granting in Part Temporary Injunction Under Section  
9 10(j) of the National Labor Relations Act, as Amended (29 U.S.C. § 160(j)) was  
10 read to employees in the presence of Mr. Selder and a representative of the Union.  
11 At each of these meetings, I read the Order in English. Nicolas Palaez, Assistant  
12 Director of Operations for High Flying Foods, read the Order in Spanish at the 10  
13 am and 2 pm meetings and Mr. Selder read the Order in Spanish at the 9 pm  
14 meeting. Employees were provided notice as to the time and place of the reading  
15 and were notified that they would be paid for the time spent at the reading. The  
16 Order was read during the paid working time of the employees.

17 I declare under penalty of perjury, under the laws of the United States of  
18 America that the foregoing is true and correct.

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20 \_\_\_\_\_  
Kevin Westlye

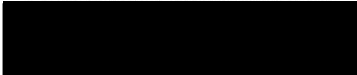
21 4834-4702-5186, v. 1  
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# **EXHIBIT A**





February 13, 2015

Francisco Hernandez  


Francisco,

Per court order case number 15cv0039-GPC(JLB) High Flying Foods is offering you immediate interim reinstatement to the position of utility worker. The job duties, rate of pay, and benefits will be the same. Please contact Carrie Williams at 619-818-2611 to coordinate an appointment with the ACO to reinstate your security badge. Once your badge is reinstated we will immediately give you similar hours and shifts as you experienced before August 18, 2014.

We will remove from your employee file any and all reference to your suspension and termination. The suspension and termination will not be used against you in any way. We will make your employee file available to you at any time so you may verify that all documents related to the suspension and termination have been removed.

Sincerely,

A handwritten signature in black ink, appearing to read "CW", enclosed within a circular scribble.

Carrie Williams  
Human Resources  
High Flying Foods

1 Karl Terrell, *Motion pro hac vice*  
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6 **Attorneys for Respondent, High Flying Foods**

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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 OLIVIA GARCIA, Regional Director of  
12 Region 21 of the National Labor  
Relations Board, for and on behalf of the  
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Case No. 15CV0039-GPC(JLB)

Action Date: January 8, 2015

**PROOF OF SERVICE**

Dept: 2D

Judge: Hon. Gonzalo P. Curiel

1 *Garcia v. High Flying Foods*  
2 United States District Court, Southern District of California  
3 Case No. 15CV0039-GPC(JLB)

4 **PROOF OF SERVICE**

5 I, Jacqueline Godoy caused the attorney(s) on the service list to be served via  
6 the Court's electronic filing system pursuant to Federal Rules of Civil Procedure  
7 5(d)(2)(3) and (4) and 83, and Local Rule 5.

8 On March 3, 2015, I served the following document(s) described as:

- 9
- 10 • **AFFIDAVIT OF KEVIN WESTLYE RE COMPLIANCE WITH THE**  
11 **COURT'S FEBRUARY 12, 2015, ORDER**

12 The following are those who are currently on the list to receive e-mail notices  
13 for this case.

- 14 • **Robert Neal Mackay** – Robert.Mackay@nlrb.gov
- 15 • **Ami Virginia Silverman** – ami.silverman@nlrb.gov

16 Executed on March 3, 2015, at San Diego, California.

17 I declare under penalty of perjury under the laws of the State of California  
18 that the foregoing is true and correct.

19 /s/ Jacqueline Godoy  
20 Jacqueline Godoy  
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